IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

RPFC.No. 46 of 2003()

MC.499/2000 of FAMILY COURT, MANJERI
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REVISION PETITIONER/RESPONDENT

KORAMBAYIL HYDER ALIAS KAYYADAYI HYDER,
AGED 28 YEARS, S/O.MUHAMMED, KORAMBAYIL HOUSE,
THOTTINDAKKARA, CHENBANKUNNU, MAMPAD P.O.,
MANJERI, VIA MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: PETITIONERS
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1. V.P.SALEENA, 24 YEARS, D/O.ALIKUTTY,
VADAKKEPOLAKATHPUTHUKKUDI HOUSE,
ANGADIKKUNNU, NADUVAKKAD, MAMPAD P.O.,
MANJERI, VIA MALAPPURAM DISTRICT.

2. SUFIYAR, S/O.KORAMBAYIL HYDER,
MINOR, MINOR PETITIONER IS REPRESENTED
BY THE GUARDIAN MOTHER IST RESPONDENT.

BY ADV. SRI.K.SHIBILI NAHA
BY PUBLIC PROSECUTOR SRI.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3516/2003 IN R.P.(FC)NO.46/2003

DISMISSED

12.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

R.P.(F.C)No.46 of 2003

Dated this the 12th day of June, 2007

O R D E R

The revision petitioner is the respondent in M.C.499/2000 initiated by the respondent for herself and on behalf of the minor child Sufiyar seeking maintenance under Section 125 of Crl.P.C. and under orders to pay maintenance at the rate of Rs.500/- to the respondents.

2. The contention of the counsel for the revision petitioner is that she was pregnant at the of marriage and has given birth to a child and the revision petitioner had dissolved the marriage in 1997 itself. He has also denied the paternity of the child. He has also stated that he is not having the income as mentioned in the petition.

3. The evidence adduced in the matter consisted the testimony of PW1, Exts. P1 to P3 and RWs' 1 to 4 and Ext. D1 and Ext. C1 DNA report. I find that the court below has rightly found that the report of the DNA test concludes the question as to the paternity of the second respondent. The other contention

is that he has divorced her in 1997 itself and hence the proceedings under Section 125 of Crl.P.C. will not lie. The court below have found that the revision petitioner/respondent failed to prove the alleged thalak that he has mentioned in the counter statement. The evidence in this regard is the testimony of RWs' 1 to 4 of whom RW1 is the revision petitioner himself. As mentioned by the court below RW4 is the present Secretary of the Mosque but at the time when Ext. D1 is said to have been given to the Mosque, he was not the Secretary. Hence, the evidence of RW4 would not be helpful to prove the case of the revision petitioner. The evidence of RWs' 2 and 3, who are admittedly the friends of the revision petitioner, was found not sufficient to establish the case set up by the revision petitioner. No register or other document wherein the entries are made as to the receipt of Ext. D1 has been produced. It is also pertinent to note that in the counter statement filed by the revision petitioner in the court below, he has just stated that marriage has been dissolved in 1997. No details like date etc. are mentioned therein.

4. In the circumstances and considering the evidence adduced, I am inclined to agree with the findings of the trial court in this regard. In so far as the quantum of maintenance, the court below has ordered at the rate of Rs.500/- per month which I find is only reasonable.

In the circumstances, the R.P.(FC) is dismissed.

K.R.UDAYABHANU,
JUDGE

csl